

## 1 HOUSE BILL NO. 2282

## 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources

4 on \_\_\_\_\_)

5 (Patron Prior to Substitute--Delegate Edmunds)

6 A BILL to amend and reenact §§ 62.1-44.15:34, as it is currently effective and as it shall become effective,  
7 62.1-44.15:51, as it is currently effective, and 62.1-44.15:55, as it shall become effective, of the  
8 Code of Virginia, relating to Virginia Stormwater Management Program; Virginia Erosion and  
9 Sediment Control Program; exemptions for the harvesting of forest crops.

10 **Be it enacted by the General Assembly of Virginia:**

11 **1. That §§ 62.1-44.15:34, as it is currently effective and as it shall become effective, 62.1-44.15:51, as**  
12 **it is currently effective, and 62.1-44.15:55, as it shall become effective, of the Code of Virginia are**  
13 **amended and reenacted as follows:**

14 **§ 62.1-44.15:34. (Contingent expiration date) Regulated activities; submission and approval**  
15 **of a permit application; security for performance; exemptions.**

16 A. A person shall not conduct any land-disturbing activity until he has submitted a permit  
17 application to the VSMP authority that includes a state VSMP permit registration statement, if such  
18 statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in  
19 lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land  
20 disturbance. A locality that is not a VSMP authority shall provide a general notice to applicants of the  
21 state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control  
22 Law (§ 62.1-44.15:51 et seq.) to begin land disturbance of one acre or greater to the Department at least  
23 monthly. Upon the development of an online reporting system by the Department, but no later than July  
24 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it  
25 is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any  
26 permit application within 60 days after it has been determined by the VSMP authority to be a complete

27 application. The VSMP authority may either issue project approval or denial and shall provide written  
28 rationale for the denial. The VSMP authority shall act on any permit application that has been previously  
29 disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed  
30 complete. Prior to issuance of any approval, the VSMP authority may also require an applicant, excluding  
31 state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of  
32 credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority, to  
33 ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after  
34 proper notice, within the time specified to initiate or maintain appropriate actions that may be required of  
35 him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such  
36 action upon such failure by the applicant, the VSMP authority may collect from the applicant the  
37 difference should the amount of the reasonable cost of such action exceed the amount of the security held.  
38 Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow,  
39 letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be  
40 refunded to the applicant or terminated. These requirements are in addition to all other provisions of law  
41 relating to the issuance of permits and are not intended to otherwise affect the requirements for such  
42 permits.

43 B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage  
44 under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of  
45 Stormwater from Construction Activities until July 1, 2014, at which time it shall no longer be considered  
46 a small construction activity but shall be then regulated under the requirements of this article.

47 C. Notwithstanding any other provisions of this article, the following activities are exempt, unless  
48 otherwise required by federal law:

49 1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
50 conducted under the provisions of Title 45.2;

51 2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or  
52 harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set  
53 forth by the Board in regulations, including engineering operations as follows: construction of terraces,

54 terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour  
55 cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply  
56 to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or  
57 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted  
58 to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

59 3. Single-family residences separately built and disturbing less than one acre and not part of a  
60 larger common plan of development or sale, including additions or modifications to existing single-family  
61 detached residential structures. However, localities subject to the provisions of the Chesapeake Bay  
62 Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single-family residences where land  
63 disturbance exceeds 2,500 square feet;

64 4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing  
65 activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the  
66 Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the  
67 provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are part of  
68 a larger common plan of development or sale that is one acre or greater of disturbance; however, the  
69 governing body of any locality that administers a VSMP may reduce this exception to a smaller area of  
70 disturbed land or qualify the conditions under which this exception shall apply;

71 5. Discharges to a sanitary sewer or a combined sewer system;

72 6. Activities under a state or federal reclamation program to return an abandoned property to an  
73 agricultural or open land use;

74 7. Routine maintenance that is performed to maintain the original line and grade, hydraulic  
75 capacity, or original construction of the project. The paving of an existing road with a compacted or  
76 impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed  
77 routine maintenance if performed in accordance with this subsection; ~~and~~

78 8. Conducting land-disturbing activities in response to a public emergency where the related work  
79 requires immediate authorization to avoid imminent endangerment to human health or the environment.  
80 In such situations, the VSMP authority shall be advised of the disturbance within seven days of

81 commencing the land-disturbing activity, and compliance with the administrative requirements of  
82 subsection A is required within 30 days of commencing the land-disturbing activity; and

83 9. Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is  
84 not intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11 (§  
85 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as described  
86 in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land disturbance  
87 necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting of timber and  
88 the construction of roads and trails for forest management purposes.

89 **§ 62.1-44.15:34. (Contingent effective date) Regulated activities; submission and approval of**  
90 **a permit application; security for performance; exemptions.**

91 A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the  
92 appropriate VESMP authority an application that includes a permit registration statement, if required, a  
93 soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if  
94 required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a  
95 prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be  
96 assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant  
97 to § 62.1-44.15:30 shall be submitted to the VESMP authority. Any VESMP authority may waive the  
98 Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of  
99 a single-family detached residential structure; however, if a violation occurs during the land-disturbing  
100 activity for the single-family detached residential structure, then the owner shall correct the violation and  
101 provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-  
102 14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior  
103 to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and  
104 shall subject the owner to the penalties provided in this article.

105 1. A VESMP authority that is implementing its program pursuant to subsection A of § 62.1-  
106 44.15:27 or subdivision B 1 of § 62.1-44.15:27 shall determine the completeness of any application within  
107 15 days after receipt, and shall act on any application within 60 days after it has been determined by the

108 VESMP authority to be complete. The VESMP authority shall issue either land-disturbance approval or  
109 denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VESMP  
110 authority shall be required to obtain evidence of permit coverage when such coverage is required. The  
111 VESMP authority also shall determine whether any resubmittal of a previously disapproved application  
112 is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after  
113 receipt.

114 2. A VESMP authority implementing its program in coordination with the Department pursuant to  
115 subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days  
116 after receipt, and shall act on any application within 60 days after it has been determined by the VESMP  
117 authority to be complete. The VESMP authority shall forward a soil erosion control and stormwater  
118 management plan to the Department for review within five days of receipt. If the plan is incomplete, the  
119 Department shall return the plan to the locality immediately and the application process shall start over.  
120 If the plan is complete, the Department shall review it for compliance with the water quality and water  
121 quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP  
122 authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written  
123 rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application  
124 after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP  
125 authority shall be required to obtain evidence of permit coverage when such coverage is required.

126 The VESMP authority also shall forward to the Department any resubmittal of a previously  
127 disapproved application within five days after receipt, and the VESMP authority shall determine whether  
128 the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for  
129 compliance with the water quality and water quantity technical criteria and provide its recommendation  
130 to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days  
131 after receipt.

132 3. When a state agency or federal entity submits a soil erosion control and stormwater management  
133 plan for a project, land disturbance shall not commence until the Board has reviewed and approved the  
134 plan and has issued permit coverage when it is required.

135 a. The Board shall not approve a soil erosion control and stormwater management plan submitted  
136 by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that  
137 has not adopted a local program with more stringent ordinances than those of the state program or (ii) in  
138 multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of  
139 the state program.

140 b. The Board shall not approve a soil erosion control and stormwater management plan submitted  
141 by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a  
142 local program with more stringent ordinances than those of the state program, unless the plan is consistent  
143 with the requirements of the local program.

144 c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion  
145 control and stormwater management plan to the Department.

146 d. The state agency or federal entity responsible for the land-disturbing activity shall ensure  
147 compliance with the approved plan. As necessary, the Board shall provide project oversight and  
148 enforcement.

149 4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an  
150 applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with  
151 surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable  
152 to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's  
153 expense should he fail, after proper notice, within the time specified to comply with the conditions  
154 imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes  
155 such action upon such failure by the applicant, the VESMP authority may collect from the applicant the  
156 difference should the amount of the reasonable cost of such action exceed the amount of the security held.  
157 Within 60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of  
158 credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to  
159 the applicant or terminated.

160 B. The VESMP authority may require changes to an approved soil erosion control and stormwater  
161 management plan in the following cases:

162 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or  
163 ordinances; or

164 2. Where the owner finds that because of changed circumstances or for other reasons the plan  
165 cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements  
166 of this article, are agreed to by the VESMP authority and the owner.

167 C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion  
168 control and stormwater management plan for any land identified as an erosion impact area by the VESMP  
169 authority.

170 D. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding  
171 the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the  
172 administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall  
173 be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

174 E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

175 1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than  
176 one acre of land and is part of a larger common plan of development or sale that results in one acre or  
177 greater of land disturbance may, in accordance with regulations adopted by the Board, be required to  
178 obtain permit coverage.

179 2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay  
180 Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

181 a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this  
182 article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce  
183 this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall  
184 be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply  
185 to additions or modifications to existing single-family detached residential structures.

186 b. Soil erosion control requirements and water quantity and water quality technical criteria shall  
187 apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land  
188 and is part of a larger common plan of development or sale that results in one acre or greater of land

189 disturbance, although the locality may reduce this regulatory threshold to a smaller area of disturbed land.  
190 A plan addressing these requirements shall be submitted to the VESMP authority in accordance with  
191 subsection A.

192 3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation  
193 Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

194 a. Soil erosion control and water quantity and water quality technical criteria shall apply to any  
195 land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family detached  
196 residential structure. However, the governing body of any affected locality may reduce this regulatory  
197 threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to  
198 the VESMP authority in accordance with subsection A.

199 b. For land-disturbing activities for single-family detached residential structures, soil erosion  
200 control and water quantity technical criteria shall apply to any land-disturbing activity that disturbs 2,500  
201 square feet or more of land, and the locality also may require compliance with the water quality technical  
202 criteria. A plan addressing these requirements shall be submitted to the VESMP authority in accordance  
203 with subsection A.

204 F. Notwithstanding any other provisions of this article, the following activities are not required to  
205 comply with the requirements of this article unless otherwise required by federal law:

206 1. Minor land-disturbing activities, including home gardens and individual home landscaping,  
207 repairs, and maintenance work;

208 2. Installation, maintenance, or repair of any individual service connection;

209 3. Installation, maintenance, or repair of any underground utility line when such activity occurs on  
210 an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the  
211 area of the road, street, or sidewalk that is hard surfaced;

212 4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in  
213 an overall plan for land-disturbing activity relating to construction of the building to be served by the  
214 septic tank system;

215 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
216 conducted pursuant to Title 45.2;

217 6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling,  
218 planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations;  
219 agricultural engineering operations, including construction of terraces, terrace outlets, check dams,  
220 desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour  
221 furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations.  
222 However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting  
223 occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100  
224 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in  
225 subsection B of § 10.1-1163;

226 7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or  
227 poles;

228 8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are  
229 within the regulatory authority of and approved by local wetlands boards, the Marine Resources  
230 Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed  
231 outside of this exempted area shall remain subject to this article and the regulations adopted pursuant  
232 thereto;

233 9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other  
234 related structures and facilities of a railroad company;

235 10. Land-disturbing activities in response to a public emergency where the related work requires  
236 immediate authorization to avoid imminent endangerment to human health or the environment. In such  
237 situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the  
238 land-disturbing activity, and compliance with the administrative requirements of subsection A is required  
239 within 30 days of commencing the land-disturbing activity; ~~and~~

240 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing  
241 activity; and

242 12. Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is  
243 not intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11 (§  
244 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as described  
245 in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land disturbance  
246 necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting of timber and  
247 the construction of roads and trails for forest management purposes.

248 G. Notwithstanding any other provision of this article, the following activities are required to  
249 comply with the soil erosion control requirements but are not required to comply with the water quantity  
250 and water quality technical criteria, unless otherwise required by federal law:

251 1. Activities under a state or federal reclamation program to return an abandoned property to an  
252 agricultural or open land use;

253 2. Routine maintenance that is performed to maintain the original line and grade, hydraulic  
254 capacity, or original construction of the project. The paving of an existing road with a compacted or  
255 impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed  
256 routine maintenance if performed in accordance with this subsection; and

257 3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

258 **§ 62.1-44.15:51. (Contingent expiration date) Definitions.**

259 As used in this article, unless the context requires a different meaning:

260 "Agreement in lieu of a plan" means a contract between the plan-approving authority and the  
261 owner that specifies conservation measures that must be implemented in the construction of a single-  
262 family residence; this contract may be executed by the plan-approving authority in lieu of a formal site  
263 plan.

264 "Applicant" means any person submitting an erosion and sediment control plan for approval or  
265 requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

266 "Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate  
267 of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training  
268 program for project inspection and successfully completes such program within one year after enrollment.

269 "Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a  
270 certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training  
271 program for plan review and successfully completes such program within one year after enrollment, or  
272 (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article  
273 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

274 "Certified program administrator" means an employee or agent of a VESCP authority who (i) holds  
275 a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the  
276 Board's training program for program administration and successfully completes such program within one  
277 year after enrollment.

278 "Department" means the Department of Environmental Quality.

279 "Director" means the Director of the Department of Environmental Quality.

280 "District" or "soil and water conservation district" means a political subdivision of the  
281 Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter  
282 5 of Title 10.1.

283 "Erosion and sediment control plan" or "plan" means a document containing material for the  
284 conservation of soil and water resources of a unit or group of units of land. It may include appropriate  
285 maps, an appropriate soil and water plan inventory and management information with needed  
286 interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all  
287 major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the  
288 conservation objectives.

289 "Erosion impact area" means an area of land not associated with current land-disturbing activity  
290 but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or  
291 into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less  
292 used for residential purposes or to shorelines where the erosion results from wave action or other coastal  
293 processes.

294 "Land-disturbing activity" means any man-made change to the land surface that may result in soil  
295 erosion from water or wind and the movement of sediments into state waters or onto lands in the

296 Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of  
297 land, except that the term shall not include:

298 1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs,  
299 and maintenance work;

300 2. Individual service connections;

301 3. Installation, maintenance, or repair of any underground public utility lines when such activity  
302 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is  
303 confined to the area of the road, street, or sidewalk that is hard surfaced;

304 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity  
305 relating to construction of the building to be served by the septic tank system;

306 5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
307 conducted pursuant to Title 45.2;

308 6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot  
309 operations, or as additionally set forth by the Board in regulation, including engineering operations as  
310 follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip  
311 cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;  
312 however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting  
313 occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100  
314 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in  
315 subsection B of § 10.1-1163;

316 7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other  
317 related structures and facilities of a railroad company;

318 8. Agricultural engineering operations, including but not limited to the construction of terraces,  
319 terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of  
320 the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating,  
321 contour furrowing, land drainage, and land irrigation;

322 9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of  
323 the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and  
324 Management Regulations; however, the governing body of the program authority may reduce this  
325 exception to a smaller area of disturbed land or qualify the conditions under which this exception shall  
326 apply;

327 10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or  
328 poles;

329 11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are  
330 within the regulatory authority of and approved by local wetlands boards, the Marine Resources  
331 Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed  
332 outside of this exempted area shall remain subject to this article and the regulations adopted pursuant  
333 thereto;~~and~~

334 12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-  
335 disturbing activity would have required an approved erosion and sediment control plan, if the activity  
336 were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the  
337 requirements of the VESCP authority; and

338 13. Clearing lands for the harvesting of forest crops when the areas on which harvesting occurs is  
339 not intended to be reforested artificially or naturally in accordance with the provisions of Chapter 11 (§  
340 10.1-1100 et seq.) of Title 10.1 or converted to bona fide agricultural or improved pasture use as described  
341 in subsection B of § 10.1-1163, provided that the land-disturbing activity is the minimum land disturbance  
342 necessary, including clearing, grading, excavating, or removal of stumps, for the harvesting of timber and  
343 the construction of roads and trails for forest management purposes.

344 "Natural channel design concepts" means the utilization of engineering analysis and fluvial  
345 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the  
346 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows  
347 larger flows to access its bankfull bench and its floodplain.

348 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein,  
349 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person,  
350 firm, or corporation in control of a property.

351 "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a  
352 particular location.

353 "Permittee" means the person to whom the local permit authorizing land-disturbing activities is  
354 issued or the person who certifies that the approved erosion and sediment control plan will be followed.

355 "Person" means any individual, partnership, firm, association, joint venture, public or private  
356 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,  
357 city, town, or other political subdivision of the Commonwealth, governmental body, including a federal  
358 or state entity as applicable, any interstate body, or any other legal entity.

359 "Runoff volume" means the volume of water that runs off the land development project from a  
360 prescribed storm event.

361 "Town" means an incorporated town.

362 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the  
363 Board that has been established by a VESCP authority for the effective control of soil erosion, sediment  
364 deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the  
365 unreasonable degradation of properties, stream channels, waters, and other natural resources and shall  
366 include such items where applicable as local ordinances, rules, permit requirements, annual standards and  
367 specifications, policies and guidelines, technical materials, and requirements for plan review, inspection,  
368 enforcement where authorized in this article, and evaluation consistent with the requirements of this article  
369 and its associated regulations.

370 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an  
371 authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An  
372 authority may include a state entity, including the Department; a federal entity; a district, county, city, or  
373 town; or for linear projects subject to annual standards and specifications, electric, natural gas, and

374 telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies,  
375 or authorities created pursuant to § 15.2-5102.

376 "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by  
377 the impervious surface of the land development project.

378 **§ 62.1-44.15:55. (Contingent effective date) Regulated land-disturbing activities; submission**  
379 **and approval of erosion and sediment control plan.**

380 A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state  
381 agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until  
382 he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing  
383 activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination  
384 System permit coverage is required, a VESCP authority shall be required to obtain evidence of such  
385 coverage from the Department's online reporting system prior to approving the erosion and sediment  
386 control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP  
387 authority regarding the administration of multijurisdictional projects specifying who shall be responsible  
388 for all or part of the administrative procedures. Should adjacent authorities fail to come to such an  
389 agreement, each shall be responsible for administering the area of the multijurisdictional project that lies  
390 within its jurisdiction. Where the land-disturbing activity results from the construction of a single-family  
391 residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if  
392 executed by the VESCP authority.

393 B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant  
394 written approval within 60 days of the receipt of the plan if it determines that the plan meets the  
395 requirements of this article and the Board's regulations and if the person responsible for carrying out the  
396 plan certifies that he will properly perform the erosion and sediment control measures included in the plan  
397 and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-  
398 disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall  
399 provide the name of an individual holding a certificate to the VESCP authority, as provided by § 62.1-  
400 44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However,

401 any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for  
402 construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the  
403 person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide  
404 the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the  
405 name of an individual holding a certificate prior to engaging in land-disturbing activities may result in  
406 revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject  
407 to the penalties provided in this article.

408         When a plan is determined to be inadequate, written notice of disapproval stating the specific  
409 reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify  
410 the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the  
411 VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the  
412 person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion  
413 and sediment control plan that has been previously disapproved within 45 days after the plan has been  
414 revised, resubmitted for approval, and deemed adequate.

415         C. The VESCP authority may require changes to an approved plan in the following cases:

- 416         1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or  
417         2. Where the person responsible for carrying out the approved plan finds that because of changed  
418 circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed  
419 amendments to the plan, consistent with the requirements of this article and associated regulations, are  
420 agreed to by the VESCP authority and the person responsible for carrying out the plan.

421         D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and  
422 sediment control plan for any land identified by the VESCP authority as an erosion impact area.

423         E. For the purposes of subsections A and B, when land-disturbing activity will be required of a  
424 contractor performing construction work pursuant to a construction contract, the preparation, submission,  
425 and approval of an erosion and sediment control plan shall be the responsibility of the owner.

426         F. Notwithstanding any other provisions of this article, the following activities are not required to  
427 comply with the requirements of this article unless otherwise required by federal law:

- 428 1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet  
429 in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation  
430 Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may reduce this  
431 exception to a smaller area of disturbed land or qualify the conditions under which this exception shall  
432 apply;
- 433 2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs,  
434 and maintenance work;
- 435 3. Installation, maintenance, or repair of any individual service connection;
- 436 4. Installation, maintenance, or repair of any underground utility line when such activity occurs on  
437 an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the  
438 area of the road, street, or sidewalk that is hard surfaced;
- 439 5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in  
440 an overall plan for land-disturbing activity relating to construction of the building to be served by the  
441 septic tank system;
- 442 6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects  
443 conducted pursuant to Title 45.2;
- 444 7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling,  
445 planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations;  
446 agricultural engineering operations, including construction of terraces, terrace outlets, check dams,  
447 desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour  
448 furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations.  
449 However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting  
450 occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100  
451 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in  
452 subsection B of § 10.1-1163;
- 453 8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or  
454 poles;

